

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

BIS ADVANCED SOFTWARE SYSTEMS, LTD.,

Plaintiff,

v.

RED BEND SOFTWARE, INC.,  
RED BEND, LTD.,  
TIME WARNER INC.,  
ICQ, INC.  
INSTALLSHIELD SOFTWARE CORP.,  
and  
SCANSOFT, INC.

Civil Action No. 04cv11960 (RWZ)

Defendants.

**OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THE COMPLAINT**

Defendants Red Bend Software, Inc., Red Bend, Ltd., ICQ, Inc., and Installshield Software Corp. (collectively "Defendants")<sup>1</sup> submit this brief in Opposition to Plaintiff's Motion for Leave to File An Amended Complaint ("Motion").

Plaintiff's Motion offers no justification for seeking leave to amend to add five new Red Bend customers as defendants, almost a year in to this litigation. As set forth in more detail below, plaintiff has no excuse for this delay – it has long known about the parties. It also has no reasons why adding these parties would assist the action. In fact, at the scheduling conference on January 27, 2005, plaintiff admitted it was aware of other Red Bend customers and represented to the court that it was not going to add any more such customers as parties because such an addition would not assist the case and, rather, would complicate the case and make it more expensive.

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<sup>1</sup> Defendants note that BIS has stipulated to the dismissal of defendants Time Warner, Inc. and Scansoft, Inc.

Then, five months ago, after settlement negotiations did not proceed as plaintiff wished, plaintiff started harassing Red Bend customers by sending letters threatening to add them as defendants. *See Exhibit A.*<sup>2</sup> Thus, knowing about these potential defendants since the beginning of the action, representing to this court that it did not wish to add customers to the action, then claiming at least five months ago that it did want to add more customers as defendants, plaintiff has delayed too long.

Plaintiff's Motion also ignores the real and unavoidable prejudice to defendants if five new parties are added at this time. Although plaintiff asserts that there will be no "undue delay" in the proceedings and no prejudice, it is unrealistic at best to suggest that five new defendants could be added to this patent litigation without requiring significantly more expense and delay. Indeed, discovery of these five new parties makes plaintiff's proposed Second Amended Scheduling Order inadequate. It is equally unrealistic to suggest that the addition of five new defendants, which Red Bend must defend, will not result in other prejudice, including a dramatic increase in the cost of the litigation.

Lastly, plaintiff does not even make a showing that some of these parties are proper parties, namely that they made, used or sold alleged infringing products in the United States.

As discussed in more detail below, because plaintiff has unduly delayed in seeking to amend its Complaint to add new parties, because plaintiff has no justification for its delay, and because defendants will be unduly prejudiced by the late addition of five new defendants, plaintiff's motion should be denied.

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<sup>2</sup> This is part of a pattern of harassment. Other examples are that BIS filed this action on the eve of a round of financing by Red Bend and filed this motion on the eve of settlement negotiations between the parties.

## BACKGROUND/PROCEDURAL HISTORY

BIS Advanced Software Systems, Ltd. (“BIS”) commenced this action on September 9, 2004. In its initial Complaint, BIS alleged that Red Bend Software Inc. and Red Bend, Ltd.<sup>3</sup> (collectively “Red Bend”) as well as certain of Red Bend’s customers infringe United States Patent No. 6,401,239 (the “‘239 patent”) by making, using, selling, offering to sell or importing certain computer software developed and distributed by Red Bend. *See generally* Complaint dated September 9, 2004 [D.I. 1].

A Rule 16 initial scheduling conference took place on January 27, 2005. Before the conference, the parties discussed a proposed schedule in detail, later submitting a proposed scheduling order based on those discussions and the court’s instructions. *See* D.I. 26. Tellingly, neither the initial proposed scheduling order nor the agreed-upon first Amended Scheduling Order (endorsed by the court on May 11, 2005) included a deadline for amendments to the pleadings or addition of new parties.

The omission was not an oversight. Rather, the question of who are the appropriate parties was discussed during the January 27, 2005 conference with the Court. First, defendants suggested that it was appropriate to dismiss certain defendants in order to simplify and streamline the case.<sup>4</sup> Second, plaintiff admitted it was aware of other Red Bend customers but represented to the Court that it would not add these parties because they would not aid the case substantively and would merely add to the expense and time to resolution. As a result, the Scheduling Order contained no deadline to add parties because the issue was moot.

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<sup>3</sup> Misnamed “Red Bend Software, Ltd.” in the Complaint.

<sup>4</sup> With its Motion for Leave to Amend, BIS also filed a Stipulation of Dismissal as to two entities, including Time Warner.

Then – after settlement negotiations broke down – BIS’s counsel sent a draft motion to amend its complaint to Red Bend and to its customers. This letter proposed to add Red Bend customers RealNetworks, Inc.; Symbian, Inc.; Macrovision Corporation (“Macrovision”); Sony Ericsson Mobile Communications (USA) Inc. (“Sony Ericsson”); Siemens Information and Communications Mobile LLC (“Siemens Information”); and Siemens Communications Inc. (“Siemens Communications”). *See Exhibit A* (March 3, 2005 letter from Ms. Lhommedieu to Mr. Horwitz, with enclosures).

In these March 3, 2005 letters to each of these Red Bend customers, BIS stated “[w]e intend to file this motion ten business days after the date of this letter [March 17, 2005].” *Id.* However, BIS did not file the motion to amend in March or at any time during the spring.

Discovery proceeded and on March 4, BIS served its first sets of discovery requests, including document requests, interrogatories, and requests for admissions, on defendants. Defendants Red Bend, Ltd., Red Bnd Software, Inc., and ICQ served written responses to plaintiff’s discovery requests on April 22, and Installshield served its written responses on April 29. By the end of June, Red Bend had substantially completed its document production, having produced about 100,000 pages<sup>5</sup> of materials, including a CD containing several versions of source code.

On June 29, 2005, more than nine months after commencing this action, and after Red Bend’s response to paper discovery was almost complete, BIS sent a new letter to five Red Bend customers, once again informing them that BIS intended to file a motion to amend its Complaint within ten business days of this new letter, namely by July 14, 2005. *See Exhibit B* (June 29, 2005 letter from Ms. Lhommedieu to Ms. Fernands, with enclosures). Four of the five recipients

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<sup>5</sup> More than 45,000 pages of documents in addition to multiple versions of source code which, if printed, would total roughly 65,000 pages.

of the June 29 letter, Macrovision, Sony Ericsson, Siemens Information and Siemens Communications, had also received the March 3 letter from BIS. The fifth recipient of the June 29 letter, America Online, Inc. ("AOL") has been identified as a customer on the Red Bend website since before the beginning of this lawsuit.

As in March, BIS did not file its motion to amend ten days after the date of its letter to Red Bend's customers. Instead, BIS waited over a month to file its motion for leave to file an amended complaint.

## ARGUMENT

Plaintiff's Motion should be denied for any number of reasons.

First, plaintiff did not seek to add new parties as soon as it was reasonably aware of them, in violation of Local Rule 15.1(A). L.R. 15.1(A). In fact, plaintiff has been aware of most, if not all, of the additional defendants since before this litigation began and represented to the court that it would not add more Red Bend customers because it would unduly complicate the proceedings. In addition, plaintiff unduly delayed in seeking to amend the complaint, without providing any explanation for the delay, much less an adequate explanation for the delay. *See Acosta-Mestre v. Hilton Intr'l of Puerto Rico, Inc.*, 156 F.3d 49, 51 (1st Cir. 1998) ("Among the adequate reasons for denying leave to amend are 'undue delay' in filing the motion and 'undue prejudice to the opposing party by virtue of allowance of the amendment.'") (*citing Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)).

Second, the existing defendants will be prejudiced by the addition of five new parties almost a year after the initial Complaint was filed. *Id.* Red Bend – a small company which must defend its customers – would be put to the expense of gathering documents from some of the largest technology companies in the world from multiple sites in Europe, Asia and America. The

corresponding prejudice to plaintiff by failing to add the parties is non-existent – plaintiff admitted that these parties would add nothing of interest to the case, and would significantly delay resolution.

Finally, plaintiff offers no explanation for why these additional parties are even proper parties and should be added; they are not necessary to full and final resolution of plaintiff's claims. In fact, plaintiff gives no support for the fact that some of the new defendants even make or sell the accused product, let alone do so in the United States.

Rule 15(a) provides that leave shall be freely given only "*when justice so requires.*" Fed. R. Civ. P. 15(a) (emphasis added). Here, the Rules, the caselaw and justice all support denial of plaintiff's Motion.

**A. Plaintiff Did Not Seek Leave To Add New Parties "As Soon As" It Was Aware Of Them And In Fact Delayed Its Motion.**

Local Rule 15.1(A) requires that "[a]mendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party." L.R. 15.1(A).

Here, BIS's counsel was aware of at least four of the proposed new defendants since the beginning of the action. AOL has been mentioned on Red Bend's website since at least February of 2004 (several months before the Complaint was filed), and Sony Ericsson, Siemens Information and Siemens Communications, have been listed on the website since at least October of 2004 (shortly after the Complaint was filed). In fact, the addition of Red Bend customers was discussed at the scheduling conference with the Court on January 27, 2005, and plaintiff specifically represented that it was not going to add new parties because, as customers of Red Bend, they would not help the prosecution of the litigation and would increase costs for all.

BIS's own correspondence establishes that, not only was BIS aware of the identity of all of these proposed new parties, but five months ago BIS's counsel had already prepared a motion to amend to add four of the five proposed new parties. *See Exhibit A.*

BIS's delay from the beginning of this litigation and its delay in filing the motion from at least March until August violates Local Rule 15.1(A)'s requirement that a party must seek to add any new parties as soon as reasonably aware of those parties. BIS's motion should be denied on this basis alone. *See L.R. 15.1(A).*

In addition, as the First Circuit has noted, both Supreme Court and circuit precedent establish that "especially where allowing the amendment will cause further delay in the proceedings, 'undue delay' in seeking the amendment may be a sufficient basis for denying leave to amend." *Acoste-Mestre*, 156 F.3d at 52. Here, BIS delayed more than eleven months from filing the initial Complaint, and more than five months since they claimed an intention to add additional defendants, before seeking leave to amend. This delay alone is sufficient to deny BIS's motion.

Moreover, when "considerable time has elapsed between the filing of the complaint and the motion to amend, the movant has the burden of showing some 'valid reason for his neglect and delay.'" *Acosta-Mestre*, 156 F.3d at 52 (citation omitted). In this case, BIS waited eleven months between filing the Complaint and seeking leave to amend. BIS offers no explanation for this delay, and there is no reason why BIS could not have sought leave to amend more than five months ago. In light of both BIS's lengthy delay and its failure to offer any explanation for the delay, its motion for leave to file an amended complaint should be denied.

**B. Defendants Will Be Unduly Prejudiced By The Addition Of Five New Defendants.**

BIS is also unrealistic to suggest that adding five more parties will not result in prejudice. As discussed in *Acoste-Mestre*, delay in the litigation and added costs may each prejudice the party opposing the amendment. The addition of five new parties will almost certainly delay final resolution and will substantially increase the costs of the litigation. Because “[R]ule 15(a)’s liberal amendment policy seeks to service justice, but does not excuse a lack of diligence that imposes additional and unwarranted burdens on an opponent and the courts,” BIS’s motion should be denied. *See Acoste-Mestre*, 156 F.3d 49, 53.

Currently, this action is between relatively small companies BIS and Red Bend (while Time Warner was originally named, it was recognized as early as the Scheduling Conference that it was not a proper party and would be dismissed, and a stipulation of dismissal has since been filed). Now, Plaintiff’s motion is attempting to add some of the largest technology companies in the world with the dramatic additional burden that imposes, but with no additional benefit. In fact, it was for this very reason that plaintiff did not include more Red Bend customers at the beginning of this action and agreed at the Scheduling Conference not to include them.

As this case stands, defendants have completed document discovery – even if plaintiff’s motion to compel is granted, it involves only a handful of additional documents that do not add to the substance already produced. *See Opposition to Plaintiff’s Motion to Compel Discovery.*

If this motion to add parties is granted, the case would include Siemens Information, Siemens Communications, Sony Ericsson, AOL and Macrovision. AOL is one of the world’s largest online service providers with revenues of over 8 billion dollars. See [http://www.hoovers.com/america-online/-/ID\\_15558--/free-co-factsheet.xhtml](http://www.hoovers.com/america-online/-/ID_15558--/free-co-factsheet.xhtml). Siemens Communications is also a large company with Over 60,000 employees in 160 countries and

revenues of over 22 billion dollars. See <http://www.siemens.com>. Siemens Information is a wholly owned subsidiary of Siemens, having itself over 900 employees. Sony Ericsson is a joint venture of Sony and Ericsson with Global management in London, and research and development in Sweden, Japan, China, the US and UK. See <http://www.sonyericsson.com/spg.jsp>. Macrovision is the smallest of these new defendants with sales of over \$182 million per year and over 600 employees. See [http://www.hoovers.com/macrovision/-ID\\_\\_52934--/free-co-factsheet.xhtml](http://www.hoovers.com/macrovision/-ID__52934--/free-co-factsheet.xhtml).

These are all customers of Red Bend, and Red Bend has the burden of defending these companies if they are added to this litigation. Thus, adding the parties would entail Red Bend attorneys potentially having to gather documents from these large companies. Red Bend would have to interview many employees of these companies about the existence of files and then collect files from multiple locations, including Sweden, Japan, Germany, California, the UK, and Virginia. Red Bend is a small company with limited resources, and to require Red Bend to conduct this additional discovery is unduly burdensome.

Indeed, plaintiff has made it clear that it will insist on a complete production, with no ground given on what is duplicative and/or unduly burdensome.<sup>6</sup> For example, in its motion to compel, plaintiff seeks admittedly duplicative materials from existing defendants and further requests that this court strike defendants' objection to producing exact duplicate copies of documents. Apparently then, where there are emails that were copied to many people, plaintiff wants a copy from each person's inbox regardless of whether the emails are identical in every respect.

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<sup>6</sup> If the Court agrees with Red Bend that separate discovery from Red Bend's customers is purely duplicative of discovery of Red Bend, then these Herculean efforts would not be necessary, even if the additional parties were added. However, as discussed below, the very fact that discovery of the proposed additional parties would be

In addition, as acknowledged by plaintiff at the scheduling conference, this massive effort will not help advance the case. On the issue of liability, these parties are Red Bend customers and the understanding of how the Red Bend product functions lies more with Red Bend than with its customers.

On the issue of damages, discovery from these parties is equally unhelpful. There are two measures of damages: BIS lost sales or a reasonable royalty. See *Smithkline Diagnostics, Inc. v. Helena Laboratories Corp.*, 926 F.2d 1161, 1163, 17 USPQ2d 1922, 1924 (Fed. Cir. 1991) (citing *Chisum on Patents*: “A patentee may seek to recover actual damages, usually, the amount of profits actually lost, or if unable to prove actual damages, the patentee is entitled to a reasonable royalty.”). BIS is not in competition in telephony with Siemens or Sony Ericsson and not in competition in internet issues with AOL or Macrovision. Thus, there is no issue of sales BIS lost to them.

As to a reasonable royalty, the measure of royalty is in a license to Red Bend and the proposed new parties, as customers of Red Bend, will automatically be licensed. See, e.g., *Intel Corp. v. ULSI Corp.*, 995 F.2d 1566, 1568, 27 USPQ2d 1136, 1138 (Fed. Cir. 1993), cert. denied, 510 U.S. 1092 (1994) (“The law is well settled that an authorized sale [by licensee] of a patented product places that product beyond the reach of the patent ... The patent owner’s rights with respect to the product end with its sale, ...and a purchaser of such a product may use or resell the product free of the patent...This longstanding principle applies similarly to a sale of a patented product manufactured by a licensee acting within the scope of its license.”). Thus, the new proposed parties will not be helpful on the issue of damages.

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duplicative of discovery of Red Bend also weighs against expansion of the litigation to include these parties – they simply have nothing to add by way of liability or damages.

Further, although in its motion BIS asserts that the amendment will not cause undue delay in the proceedings (Motion, ¶ 2), that assertion is unrealistic. BIS has just proposed a second, revised schedule pursuant to which initial expert reports would be due at the beginning of January and fact discovery would close at the beginning of February. In requesting this four-month extension of the current schedule, BIS explains that, among other things, various holidays will inhibit deposition scheduling during much of the remaining discovery period.

Yet, despite requesting four additional months to complete discovery of existing defendants, BIS asserts that adding five new defendants – each of whom will, at a minimum, have to be served, have to answer the complaint, have to then be served with written discovery, have to respond to written discovery, have to collect documents, and have to be deposed – will not further delay proceedings.

It is not credible to suggest that with five new parties all of these things can be accomplished without significant further delay in the newly proposed schedule. Red Bend is a small company and the pendency of this action is damaging it – a fact plaintiff must have realized when it filed this action to coincide with a round of financing for Red Bend. Red Bend deserves a quick resolution to remove this cloud.

#### **C. Addition Of New Defendants Is Unnecessary, If Not Improper**

Tellingly, BIS does not even suggest that justice requires allowance of its Motion. *See generally*, Motion. Equally telling, BIS does not assert that the proposed new defendants are necessary parties or that BIS will in any way be denied complete relief if they are not added. Instead, BIS merely asserts that the proposed new defendants license and use the accused software products. *See* Motion, ¶¶ 3-4.

In other words, the sole basis for BIS's attempt to add these additional parties is because they license or use Red Bend's software. BIS can learn what it needs to know about Red Bend's software, and about any licenses to Red Bend's software, from Red Bend. The only thing to be gained from adding Red Bend's customers to the mix is delay and harassment.

In addition, BIS has no basis for claiming that three of the new defendants, Siemens Information, Siemens Communications or Sony Ericsson, are even proper parties, namely that they are using the Red Bend software in the United States. To infringe, a party must make, use or sell in the United States, or import the product in issue into the United States. 35 U.S.C. § 271.

In its three-page motion, BIS relies on Red Bend's website to support the fact that these new defendants are proper parties. Yet this website provides no proof that these proposed new defendants are currently using Red Bend products, let alone in the United States. For example, the Red Bend website states that Siemens Information "**will be incorporating**" Red Bend's technology which "**will allow**" Siemens to decrease costs associated with software repair. *See Motion, Ex. B.* Similarly, the website page states only that Sony Ericsson "**has signed**" an agreement with Red Bend "**to embed**" Red Bend's technology in Sony Ericsson's headsets.

The meaning of the future tense is clear – these parties have not yet incorporated or embedded the Red Bend technology, let alone have they incorporated it **for use in the United States**. Under these circumstances, even if BIS had timely made its request, it would not serve justice to allow it.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff's Motion for Leave to File an Amended Complaint.

**RED BEND SOFTWARE, INC., RED BEND,  
LTD., ICQ, INC. and INSTALLSHIELD  
SOFTWARE CORP.**

/s/ Brenda R. Sharton

Brenda R. Sharton (BBO # 556909)  
Miguel C. Danielson (BBO # 651288)  
GOODWIN PROCTER LLP  
53 State Street  
Boston, MA 02109  
Tel: 617-570-1000  
Fax: 617-523-1231

Ethan Horwitz (*pro hac vice*)  
Anastasia Fernands (BBO# 633131)  
GOODWIN PROCTER LLP  
599 Lexington Avenue  
New York, New York 10022  
Tel: 212-813-8800  
Fax: 212-353-3555

Dated: August 19, 2005

# EXHIBIT A

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

PAUL T. LEE<sup>1</sup>  
 JOHN V. MAZZOLA<sup>2</sup>  
 CAITLIN LHMOMMEDI<sup>2</sup>  
 SARAH S. TOOMEY<sup>2</sup>  
 RAYTHE L. TAKAGUCHI<sup>2</sup>  
 WESLEY NICOLAS<sup>2</sup>  
 BENJAMIN P. KOTA<sup>2</sup>  
 RYAN RAPPENFELT<sup>2</sup>  
 JAMES KENNETH MOORE, JR.<sup>2</sup>  
 CHARLES D. NIREYLSKI, P.D.<sup>2</sup>

OF COUNSEL:  
 BRUCE A. STONER, JR.  
 EDWARD F. KEEHAN, JR.<sup>3</sup>

TECHNICAL ADVISOR:  
 TU ANH PHAM, P.D.  
 KATHLEEN VINTNER, P.D.  
 DONALD SCALFRETO, P.D.  
 AMIRA IRIE<sup>4</sup>  
 THOMAS WEBER, P.D.  
 AZY SOPHIA KOKADI

<sup>1</sup> ADMITTED TO A BAR  
 OTHER THAN VA  
<sup>2</sup> EUROPEAN PATENT ATTORNEY  
<sup>3</sup> KOREAN PATENT ATTORNEY  
<sup>4</sup> REGISTERED PATENT AGENT

March 3, 2005

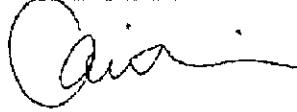
Ethan Horwitz  
 Goodwin Procter LLP  
 599 Lexington Avenue  
 New York, NY 10022

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al (our reference no. J333802)

Dear Mr. Horwitz:

Enclosed please find copies of letters sent to the additional parties sought to be added along with a copy of our client's motion to amend the complaint and the proposed amended complaint in the above-referenced case.

Very truly yours,  
 GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

**LAW OFFICES**  
**GREENBLUM & BERNSTEIN, P.L.C.**  
 PATENT, COPYRIGHT AND TRADEMARK MATTERS  
 1950 ROLAND CLARKE PLACE  
 RESTON, VA 20191-1411  
 TEL: (703) 716-1191  
 FAX: (703) 716-1180  
 EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)  
[www.gpatent.com](http://www.gpatent.com)

NEIL F. GREENBLUM  
 BRUCE B. BERNSTEIN  
 JAMES L. BOWLAND  
 ARNOLD FURK  
 MICHAEL J. FINK  
 STEVEN WHOGMAN  
 LESLIE J. PAPERNICK  
 WILLIAM FINGER  
 STEPHEN M. ROYLANTE  
 ROBERT W. MUELLER  
 JILL M. BROWNING  
 ALAN M. LEWINSON  
 WILLIAM B. LYODANE  
 WILLIAM S. POSENICK  
 PAUL A. BRAKKE, Ph.D.  
 P. BRANKO PEJIC  
 JESSICA M. TAN  
 JOSEPH FRAZER  
 HENRY J. KUEHNSTEIN, Ph.D.  
 HONG J. KIM  
 VANCE C. WERNER  
 LINDA C. HODGE  
 JOSEPH M. POSENICK  
 CHRISTOPHER W. MARTIN  
 OLIVER B. ASKE, JR.  
 DANIEL B. MOORE  
 RANJUN KUMAR  
 BRIAN C. CARPENTER

PAUL T. LEE<sup>\*</sup>  
 JOHN V. MAGNOLA<sup>\*\*</sup>  
 CATHERINE HOMMEDIUS  
 SARAH S. TOOMAY<sup>\*</sup>  
 ALICE R. TAKEGUCHI<sup>\*\*</sup>  
 WEELEY NICOLAS<sup>\*</sup>  
 BENJAMIN P. ROTA<sup>\*</sup>  
 KATAN HAPFNER<sup>\*</sup>  
 JAMES RICHARD MOORE, JR.<sup>\*</sup>  
 CHARLES D. NIEHYSKI, Ph.D.<sup>\*</sup>

OF COUNSEL:  
 BRUCE B. STONER, JR.  
 EDWARD F. KIRKHAM, JR.<sup>\*</sup>

TECHNICAL ADVISORS:  
 STEPHEN FRIAN, Ph.D.  
 RACHAEL WINTER, Ph.D.  
 DONALD SCALTRITO, Ph.D.  
 AKIRA IRIBA  
 THOMAS WISER, Ph.D.  
 AZY SOPHIA KOBASHI

<sup>\*</sup>ADMITTED TO A BAR  
 OTHER THAN VA  
<sup>\*\*</sup>EUROPEAN PATENT ATTORNEY  
 KOREAN PATENT ATTORNEY  
 REGISTERED PATENT AGENT

March 3, 2005

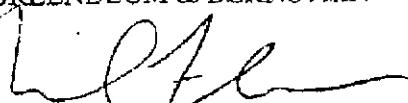
Mr. Robert Kimball  
 Vice President, Legal and Business Affairs,  
 General Counsel and Corporate Secretary  
 RealNetworks, Inc.  
 2601 Elliott Avenue  
 Suite 1000  
 Seattle, WA 98121

BY REGISTERED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al (our reference no. J333802)

Dear Mr. Kimball:

Enclosed please find a copy of our client's motion to amend the complaint in the above-referenced case and a copy of the proposed amended complaint. We intend to file this motion ten business days after the date of this letter.

Very truly yours,  
 GREENBLUM & BERNSTEIN  
  
 Neil F. Greenblum

NFG/ckl

J333802.L77

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARK PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

PAUL F. GREENBLUM<sup>1</sup>  
 ROBERT H. BERNSTEIN<sup>2</sup>  
 JAMES L. ROWLAND<sup>3</sup>  
 ARNOLD TUREK<sup>4</sup>  
 MICHAEL J. FINE<sup>5</sup>  
 STEVEN WEGMAN<sup>6</sup>  
 LESLIE J. PAPERNA<sup>7</sup>  
 WILLIAM PIZZET<sup>8</sup>  
 STEPHEN M. BOYLAN<sup>9</sup>  
 ROBERT W. MUELLER<sup>10</sup>  
 JILL M. BROWNING<sup>11</sup>  
 ALAN M. LEWIN<sup>12</sup>  
 WILLIAM E. LYDIAK<sup>13</sup>  
 WILLIAM S. BOCKNICK<sup>14</sup>  
 PAUL A. BRAINE, Ph.D.<sup>15</sup>  
 P. BRANCO PERIC<sup>16</sup>  
 JESSICA M. TRAN<sup>17</sup>  
 JOHN PINTA<sup>18</sup>  
 RICHARD H. MUENSTEINER, Ph.D.<sup>19</sup>  
 HOWIE J. XU<sup>20</sup>  
 VAN C. MENGIST<sup>21</sup>  
 LINDA J. MCGEE<sup>22</sup>  
 JOSHUA M. POVENZER<sup>23</sup>  
 CLARE V. MARTIN<sup>24</sup>  
 OLIVER B. ASKE, JR.<sup>25</sup>  
 DANIEL B. MOON<sup>26</sup>  
 MAXWELL KITTNER<sup>27</sup>  
 BRIAN C. CAREY<sup>28</sup>

PAUL T. LIN<sup>1</sup>  
 JOHN V. MAZZOLA<sup>2</sup>CATHERINE LHOUMERIE<sup>3</sup>SARAH S. TOOMBS<sup>4</sup>KATHY R. TAKROUCHI<sup>5</sup>WISLEY NICOLAS<sup>6</sup>BENJAMIN P. KOLI<sup>7</sup>RYAN KAPFERT<sup>8</sup>JAMES KENNETH MOORE, JR.<sup>9</sup>CHARLES D. NIEGELSKY, Ph.D.<sup>10</sup>OF COUNSEL<sup>11</sup>PATRICK H. STODDAR, JR.<sup>12</sup>EDWARD J. KONKLAN, JR.<sup>13</sup>TECHNICAL ADVISORS<sup>14</sup>TOM ASKE PH.D.<sup>15</sup>KATHRIN WINTER, Ph.D.<sup>16</sup>DONALD SCALIEITO, Ph.D.<sup>17</sup>ALISA IRIE<sup>18</sup>THOMAS WILKE, Ph.D.<sup>19</sup>AZY SOPHIA KOKANI<sup>20</sup>

<sup>1</sup> ADMITTED TO A BAR  
 OTHER THAN VA  
<sup>2</sup> EUROPEAN PATENT ATTORNEY  
<sup>3</sup> KOREAN PATENT ATTORNEY  
<sup>4</sup> ENDORSED KOREAN PATENT AGENT

March 3, 2005

Mr. David Levin  
 Chief Executive Officer  
 Symbian, Inc.  
 Bridge Park Center  
 390 Bridge Parkway  
 Suite 201  
 Redwood Shores, CA 94065

BY REGISTERED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al (our  
 reference no. J333802)

Dear Mr. Levin:

Enclosed please find a copy of our client's motion to amend the complaint in the above-referenced case and a copy of the proposed amended complaint. We intend to file this motion ten business days after the date of this letter.

Very truly yours,  
 GREENBLUM & BERNSTEIN



Neil F. Greenblum

NFG/ck1

J333802.L77

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL (703) 716-1191

FAX (703) 716-1180

EMAIL: [gbpatent@gbpatent.com](mailto:gbpatent@gbpatent.com)[www.gbpatent.com](http://www.gbpatent.com)

PAUL F. LEE<sup>\*</sup>  
 JOHN V. MAZZOLA<sup>\*</sup>  
 CATHERINE LEONARDIEU  
 SARAH S. TOMOTI<sup>\*</sup>  
 MATHIEU T. TAKEGUCHI<sup>\*</sup>  
 WESLEY NICOLAS<sup>\*</sup>  
 BENJAMIN P. KODA<sup>\*</sup>  
 KAREN WANGKET<sup>\*</sup>  
 JAMES RICHARD MOORE, JR.<sup>\*</sup>  
 CHARLES D. FISCHER, P.D.<sup>\*</sup>

OF COUNSEL  
 BRUCE H. STOERL, JR.  
 EDWARD F. KINNEAN, JR.<sup>\*</sup>

TECHNICAL ADVISORS  
 TIA ANN PHAM, P.D.  
 KATHLEEN WENTZER, P.D.  
 DONALD SCALITZKI, P.D.  
 ALEXIA DEPE  
 THOMAS WERKEL, P.D.  
 ALEX SOPHIA KOLAD<sup>\*</sup>

<sup>\*</sup>ADMITTED TO A BAR  
 OTHER THAN VA  
 EUROPEAN PATENT ATTORNEY  
 KOREAN PATENT ATTORNEY  
 REGISTERED PATENT AGENT

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 P. BRANTO PECIC<sup>\*</sup>  
 JESSICA H. TRAM<sup>\*</sup>  
 JOHN FRITA<sup>\*</sup>  
 HELENNEET F. WUENSTERKE, P.D.<sup>\*</sup>  
 SHON J. XU<sup>\*</sup>  
 VAN C. WICKET<sup>\*</sup>  
 LINDA C. HODGE  
 JOSHUA M. POVSNER<sup>\*</sup>  
 CLARK W. MARION<sup>\*</sup>  
 OLIVER R. ASKE, JR.  
 DANIEL A. MOON  
 HANNI PITTMAN<sup>\*</sup>  
 BRIAN C. CAREY<sup>\*</sup>

Mr. James Wickett  
 Executive Vice President of Corporate Development  
 Macrovision Corporation  
 2830 De La Cruz Boulevard  
 Santa Clara, CA 95050

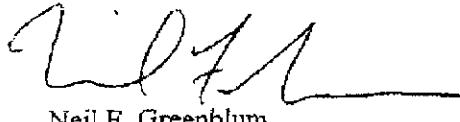
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JANET KLOPFER<sup>\*</sup>  
JAMES KENNETH MOORE, JR.<sup>\*</sup>  
CHARLES D. KIRBY<sup>\*</sup>LLP, P.A.<sup>\*</sup>

OF COUNSEL:  
BRUCE H. STONER, JR.  
EDWARD F. KENNAHAN, JR.<sup>\*</sup>

TECHNICAL ADVISORS:  
TU ANH PHAM, P.D.  
KATHLEEN WENTZER, P.D.  
DONALD SCAFFITTO, P.D.  
AURELIA TIE<sup>\*</sup>  
THOMAS WEBER, P.D.  
AMY SOPHIA KOKAN

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PAUL A. KRADER, P.D.  
P. BRANKO PEJIC<sup>\*</sup>  
JESSICA H. TIAN<sup>\*</sup>  
JOHN PERTA<sup>\*</sup>  
HELENHUA Y. MUNSTERBERG, P.D.<sup>\*</sup>  
BOB J. XU<sup>\*</sup>  
VAN C. BENNETT  
LINDA J. BODDIE  
JOSEFA M. POWERS<sup>\*</sup>  
CLARK W. MARTIN  
OLIVER E. ASKE, JR.  
DANIEL S. MOOR  
EDWARD KUTNER<sup>\*</sup>  
BRIAN C. CANNET<sup>\*</sup>

Mr. Jan Wareby  
Corporate Executive Vice President  
Sony Ericsson Mobile Communications (USA) Inc.  
7001 Development Drive  
Research Triangle Park, NC 27709

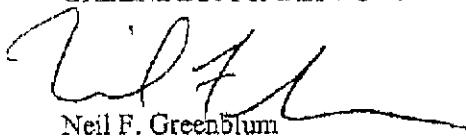
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Dear Mr. Wareby:

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Neil F. Greenblum

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KATHY E. LARNGUCH<sup>5</sup>  
WHEELER NICOLAS<sup>6</sup>  
BENJAMIN P. KOTA<sup>7</sup>  
RYAN RATHBURN<sup>8</sup>  
JAMES EDWARD MOORE, JR.<sup>9</sup>  
CHARLES D. NITBYSK, P.C.<sup>10</sup>

OF COUNSEL:  
BRUCE R. STONER, JR.  
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TECHNICAL ADVISORS:  
TIAKE PEAK, P.D.  
LAUREN VENTER, P.D.  
DONALD SCALITTO, P.D.  
AKIMA IRIE  
THOMAS WIEHL, P.D.  
AZY SOPHIA ECKART

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HONG J. XU<sup>12</sup>  
VAL C. REINERT<sup>13</sup>  
LINDA J. HODGE<sup>14</sup>  
JOSHUA M. FOVINSKY<sup>15</sup>  
CLIFF W. KASTLE<sup>16</sup>  
OLIVER R. AXEL, JR.<sup>17</sup>  
DANIEL S. MOON<sup>18</sup>  
HANNO KITTNER<sup>19</sup>  
BRIAN C. CAREY<sup>20</sup>

Mr. Bern Klein  
Senior Vice President and General Manager  
Siemens Information and Communication Mobile LLC  
5000 T-Rex Avenue  
Suite 300  
Boca Raton, FL 33431

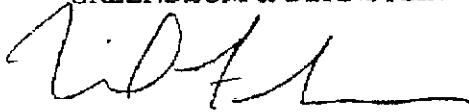
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March 3, 2005

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 P. BRAEDAO PELIC<sup>\*</sup>  
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 JOHN PINTA<sup>\*</sup>  
 KERIDAW F. MUENSTERER, P.D.<sup>\*</sup>  
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 OLIVER R. ASKE, JR.  
 DANIEL B. MOON  
 KAZUO KITAMURA<sup>\*</sup>  
 BRIAN C. CARMET<sup>\*</sup>

Mr. Bernt Klein  
 Senior Vice President and General Manager  
 Siemens Communications Inc.  
 900 Broken Sound Parkway  
 Boca Raton, FL 33487

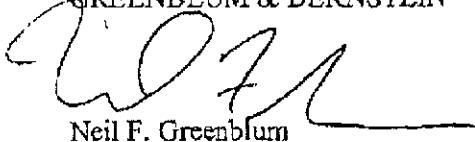
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Neil F. Greenblum

NFG/ckl

J333802.L77

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIS Advanced Software Systems, Ltd.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-11960-RWZ
	)	
Red Bend Software, Inc.,	)	
Red Bend Software, Ltd.,	)	
Time Warner Inc.,	)	
ICQ, Inc.,	)	
InstallShield Software Corp.,	)	
and	)	<b>JURY TRIAL DEMANDED</b>
ScanSoft, Inc.,	)	
Defendants.	)	

---

**MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Plaintiff BIS Advanced Software Systems, Ltd. (hereinafter "Plaintiff") requests leave of this Court to file an Amended Complaint against Defendants Red Bend Software, Inc., Red Bend Software, Ltd., Time Warner, Inc., ICQ, Inc., InstallShield Software Corp., and ScanSoft, Inc., amending the Complaint to add five Defendants.

Leave to amend a pleading shall be "freely given when justice so requires." Federal Rule of Civil Procedure 15(a). In this case, there is no substantial reason, such as undue prejudice to the non-moving party or futility, that would preclude amendment of the complaint. Plaintiff's Motion for Leave to File an Amended Complaint should be granted because: (1) the Defendants would not be unduly prejudiced; (2) the proposed amendment states a viable cause of action; (3) there would be no undue delay in the proceedings; and (4) Plaintiff has not acted in bad faith.

Plaintiff certifies that it has satisfied its obligations under L.R.15.1(b) with respect to the relief sought herein.

WHEREFORE, Plaintiff respectfully requests that this Court grant its Motion for Leave to File an Amended Complaint.

March \_\_\_\_\_, 2005

---

GRIESINGER, TIGHE, & MAFFEI, LLP  
Daniel P. Tighe  
176 Federal Street  
Boston, Massachusetts 02110-2214  
(703) 617-542-9900

---

GREENBLUM & BERNSTEIN, P.L.C.  
Neil F. Greenblum  
Michael J. Fink  
Caitlin Lhommedieu  
1950 Roland Clarke Place  
Reston, Virginia 20191  
(703) 716-1191

Attorneys for Plaintiff  
BIS Advanced Software Systems, Ltd.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIS Advanced Software Systems, Ltd.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-11960-RWZ
	)	
Red Bend Software, Inc.,	)	
Red Bend Software, Ltd.,	)	
Time Warner Inc.,	)	
ICQ, Inc.,	)	
InstallShield Software Corp.,	)	<b>JURY TRIAL DEMANDED</b>
ScanSoft, Inc.,	)	
Siemens Communications Inc.,	)	
Siemens Information and Communication	)	
Mobile LLC,	)	
Sony Ericsson Mobile Communications	)	
(USA) LLC,	)	
RealNetworks, Inc.,	)	
Symbian, Inc., and	)	
Macrovision Corporation,	)	
	)	
Defendants.	)	
	)	

PROPOSED FIRST AMENDED COMPLAINT

Plaintiff BIS Advanced Software Systems, Ltd. by and through its attorneys, hereby demands a jury trial and alleges, upon information and belief, for its Complaint against Defendants Red Bend Software, Inc., Red Bend Software, Ltd., Time Warner, Inc., ICQ, Inc., InstallShield Software Corp., ScanSoft, Inc., Siemens Communications Inc., Siemens Information and Communication Mobile LLC, Siemens Information and Communication Mobile Inc., Sony Ericsson Mobile Communications (USA) Inc., RealNetworks, Inc., Symbian, Inc. and Macrovision Corporation as follows:

THE PARTIES

1. Plaintiff BIS Advanced Software Systems, Ltd. (hereinafter, "Plaintiff BIS") is an Israeli company, with its principal place of business at 35 Montefiore Street, Tel Aviv, 65201 Israel.

2. Plaintiff BIS is the assignee of U.S. Patent No. 6,401,239 (hereinafter, "the '239 Patent"), a true and correct copy of which is attached with the Certificate of Correction as Exhibit A.

3. Defendant Red Bend Software, Inc. is organized and existing under the laws of the State of California, with its principal place of business at 175 Crossing Blvd., Suite 320, Framingham, Massachusetts 01702.

4. Defendant Red Bend Software, Ltd. is an Israeli company, with its principal place of business at 11 Amal Street, Afek Industrial Park, Rosh Ha'ayin, 48092 Israel.

5. Defendant Time Warner, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 75 Rockefeller Plaza, New York, New York 10019.

6. Defendant ICQ, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166. Upon information and belief, ICQ, Inc. is a wholly owned subsidiary of Time Warner, Inc.

7. Defendant InstallShield Software Technologies, Inc. is organized and existing under the laws of the State of Illinois, with its principal place of business at 900 National Parkway, Suite 125, Schaumberg, Illinois 60173.

8. Defendant ScanSoft, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 9 Centennial Drive, Peabody, Massachusetts 01960.

9. Defendant Siemens Communications Inc., is organized and existing under the laws of the State of Delaware, with its principal place of business at 900 Broken Sound Parkway Boca Raton, FL 33487.

10. Defendant Siemens Information and Communication Mobile LLC., is organized and existing under the laws of the State of Delaware, with its principal place of business at 5000 T-Rex Avenue, Suite 300 Boca Raton, FL 33431.

11. Defendant Sony Ericsson Mobile Communications (USA) Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 7001 Development Drive P.O. Box 13969 Research Triangle Park, NC 27709.

12. Defendant RealNetworks, Inc. is organized and existing under the laws of the State of Washington, with its principal place of business at P.O. Box 91123 Seattle, WA 98111-9223.

13. Defendant Symbian, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at Bridge Park Center 390 Bridge Parkway Suite 201, Redwood Shores, CA 94065.

14. Defendant Macrovision Corporation is organized and existing under the laws of the State of Delaware, with its principal place of business at 2830 De La Cruz Boulevard Santa Clara, CA 95050.

**JURISDICTION AND VENUE**

15. Subject matter jurisdiction of this Court is proper under 28 U.S.C. §§ 1331 and 1338.

16. This Court can properly exercise personal jurisdiction over Defendant Red Bend Software, Inc. by virtue of the fact that it is headquartered in the State of Massachusetts, thereby availing itself of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

17. This Court can properly exercise personal jurisdiction over Defendant Red Bend Software, Ltd. by virtue of the facts that it is related to Red Bend Software, Inc. and that it placed infringing software in the stream of commerce, through its U.S. Massachusetts facility, thereby availing itself of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

18. This Court can properly exercise personal jurisdiction over Defendants Time Warner, Inc. and ICQ, Inc. by virtue of the fact that, upon information and belief, they have used infringing computer software to download updates to their customers in the District of Massachusetts, including, but not limited to, software under the brand names "vCurrent" and/or "vBuild for InstallShield" thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

19. This Court can properly exercise personal jurisdiction over Defendant InstallShield Software Corp. by virtue of the fact that, upon information and belief, they have offered for sale and/or sold infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand names "vCurrent," "vBuild for

InstallShield," and/or "InstallShield Update Service," thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

20. This Court can properly exercise personal jurisdiction over Defendant ScanSoft, Inc. by virtue of the fact that they are headquartered in the State of Massachusetts, thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof, and by virtue of the fact that, upon information and belief, they have used infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand name "InstallShield Update Service."

21. This Court can properly exercise personal jurisdiction over Defendant Siemens Communication, Inc., by virtue of the fact that, upon information and belief, they have offered for sale and/or sold mobile handsets which incorporate infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand names "vCurrent," and/or "vBuild," thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

22. This Court can properly exercise personal jurisdiction over Defendant Siemens Information and Communication Mobile LLC., by virtue of the fact that, upon information and belief, they have offered for sale and/or sold mobile handsets which incorporate infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand names "vCurrent," and/or "vBuild," thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

23. This Court can properly exercise personal jurisdiction over Defendant Sony Ericsson Mobile Communications (USA) Inc., by virtue of the fact that, upon information

and belief, they have offered for sale and/or sold mobile handsets which incorporate infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand names "vCurrent," and/or "vBuild," thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

24. This Court can properly exercise personal jurisdiction over Defendant RealNetworks, Inc., by virtue of the fact that, upon information and belief, they have used infringing computer software to download updates to their customers in the state of Massachusetts, including, but not limited to, software under the brand names "vCurrent" and/or "vBuild" thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

25. This Court can properly exercise personal jurisdiction over Defendant Symbian, Inc. by virtue of the fact that, upon information and belief, they have made, and/or made available the infringing computer software to download updates to their customers in the state of Massachusetts, including, but not limited to, software under the brand names "vCurrent" and/or "vBuild" thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

26. This Court can properly exercise personal jurisdiction over Defendant Macrovision Corporation by virtue of the fact that, upon information and belief, they have offered for sale, sold and/or made available the infringing computer software in the State of Massachusetts, including, but not limited to, software under the brand names "vCurrent," "vBuild for InstallShield," and/or "InstallShield Update Service," thereby availing themselves of the laws of the State of Massachusetts and deriving the protections and benefits thereof.

27. Venue for the present action properly lies in this District pursuant to 28 U.S.C. §§ 1391(a) and (b).

**THE PATENT-IN-SUIT**

28. The '239 Patent, entitled "System and method for quick downloading of electronic files," was duly and legally issued on June 4, 2002.

29. The '239 Patent is properly assigned to Plaintiff BIS.

**BACKGROUND**

30. On or about March 22, 1999, Plaintiff BIS filed a patent application which ultimately matured into the '239 Patent.

31. The '239 Patent refers generally a system and method for improved transfer of electronic files.

32. In letters dated January 30, 2002, Plaintiff BIS notified Defendants Red Bend, Ltd. and InstallShield Software Corp. that certain computer software that they each manufactured, used, or sold infringed the '239 Patent.

33. On more than one occasion since January 30, 2002, Plaintiff BIS has notified Defendants Red Bend, Ltd. and InstallShield Software Corp. of the continuing infringement by the computer software that they manufactured, used, or sold.

**COUNT 1 — PATENT INFRINGEMENT**

34. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 22 above, as if fully set forth herein.

35. Defendants Red Bend Software, Inc., Red Bend Software, Ltd., Time Warner, Inc., ICQ, Inc., InstallShield Software Corp., ScanSoft, Inc., Siemens Communication Inc., Siemens Information and Communication Mobile LLC, Sony Ericsson Mobile Communications (USA) Inc., RealNetworks, Inc., Symbian, Inc. and Macrovision Corporation (hereinafter, collectively, the "Defendants") have made, used, offered to sell, and/or sold in the United States, and/or imported into the United States, computer software incorporating the technology claimed in the '239 Patent without Plaintiff's authorization.

36. Defendants continue to manufacture, use, offer for sale, and/or sell within the United States and/or import into the United States computer software incorporating the technology claimed in the '239 Patent without Plaintiff's authorization.

37. Defendants have and continue to induce and/or engage in contributory infringement by marketing, selling, distributing and servicing computer software within the United States incorporating the technology claimed by the '239 Patent without Plaintiff's authorization.

38. The aforementioned acts by Defendants, including making, using, selling, offering for sale, importing, distributing, maintaining and/or servicing computer software, infringe and/or have infringed the '239 Patent pursuant to at least Title 35 U.S.C. § 271(a), (b) and/or (c).

39. Defendants do not have a license to make, use, sell, offer for sale or import computer software which incorporates the technology covered by the '239 Patent.

40. Defendants' infringement of the '239 Patent has been, and continues to be, willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BIS seeks a judgment against Defendants as follows:

- a. Declaring that Defendants have infringed the '239 Patent;
- b. Declaring that Defendants have induced infringement and engaged in contributory infringement of the '239 Patent;
- c. Awarding Plaintiff BIS damages for Defendants' infringement of the '239 Patent;
- d. Declaring that Defendants' infringement of the '239 Patent is and has been willful;
- e. Awarding Plaintiff BIS treble damages and attorneys' fees for Defendants' willful infringement of the '239 Patent;
- f. Enjoining Defendants from infringing the '239 Patent in the future, where appropriate;
- g. Declaring that the case is exceptional pursuant to 35 U.S.C. § 285; and
- h. Awarding Plaintiff BIS such other and further relief as the Court may deem just and proper.

March \_\_\_\_\_, 2005

---

GRIESINGER, TIGHE, & MAFFEI, LLP  
Daniel P. Tighe  
176 Federal Street  
Boston, Massachusetts 02110-2214  
(703) 617-542-9900

---

GREENBLUM & BERNSTEIN, P.L.C.  
Neil F. Greenblum  
Michael J. Fink  
Caitlin Lhommedieu  
1950 Roland Clarke Place

Reston, Virginia 20191  
(703) 716-1191

Attorneys for Plaintiff  
BIS Advanced Software Systems, Ltd.

NFG/CKL/edb  
(J333802.C02)

## EXHIBIT B

LAW OFFICES  
**GREENBLUM & BERNSTEIN, P.L.C.**

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

NEIL F. GREENBLUM  
 BRUCE H. BERNSTEIN  
 JAMES L. ROWLAND  
 ARNOLD YORK  
 MICHAEL J. FINE  
 STEVEN WEGMAN  
 LESLIE J. PAPERKIN\*  
 WILLIAM PLEFZ  
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 ROBERT W. MUELLER  
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 ALAN M. LEWIN\*  
 WILLIAM E. LYDIAH  
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 PAUL A. BRAZER, P.D.  
 P. BRANKO PEJIC\*  
 JOHN PRETA  
 HERNANDEZ F. MUENSTERBERG, P.D.<sup>\*\*</sup>  
 HONG J. KIM\*  
 VAN C. BENNETT  
 LINDA J. HODGE  
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 CLARK W. MARTIN\*  
 OLIVIA R. ASHE, JR.  
 DANIEL B. MOON  
 HANNO BIECKNER  
 BRILIAN C. CAMPY\*  
 PAUL T. LEE\*  
 JUDY V. MATTOLA\*  
 JUDY V. MATTOLA\*

CAITLIN LHMEDIEU  
 SARAH S. TUCKMAN\*  
 KATHY E. TAKAOUCHI\*  
 WESLEY NICOLAS\*  
 BENJAMIN P. KOYA\*  
 RYAN HAWKERTY\*  
 JAMES KENNETH MOORE, J.D.  
 CHARLES D. NIELENISKI, P.D.<sup>\*\*</sup>  
 JAMES M. MCALLENAN\*

OF COUNSEL:  
 BRUCE H. STOWE, JR.  
 EDWARD F. KOTHEMAN, JR.\*  
 ANDREW M. CALDERON

TECHNICAL ADVISORS:  
 TU ANH PHAM, P.D.  
 KATHLEEN VENTER, P.D.  
 DONALD SCALFRETO, P.D.  
 AKIRA IRIK  
 THOMAS WEEHN, P.D.  
 AZY SOPHIA KUROKI

\*ADMITTED TO A BAR  
 OTHER THAN VA  
 \*EUROPEAN PATENT ATTORNEY  
 \*KOREAN PATENT ATTORNEY  
 \*\*REGISTERED PATENT AGENT

June 29, 2005

Anastasia Fernands  
 Goodwin Procter LLP  
 599 Lexington Avenue  
 New York, NY 10022

## BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al (our reference no. J333802)

Dear Anastasia,

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter.

Very truly yours,  
 GREENBLUM & BERNSTEIN

Caitlin Lhommedieu

CKL/as  
 J333802.L78

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

CAITLIN LHMOMMEDIU  
 SARAH S. TOOMEY<sup>1</sup>  
 KATHY E. LARROUCHIE<sup>2</sup>  
 WESLEY NICOLAS<sup>3</sup>  
 BENJAMIN P. KOTA<sup>4</sup>  
 RYAN RAPPETT<sup>5</sup>  
 JAMES KENNETH MOORE, JR.<sup>6</sup>  
 CHARLES D. KINSTLER, Ph.D.<sup>7</sup>  
 JAMES K. MCGLERAN<sup>8</sup>

OF COUNSEL:  
 BRUCE B. STONER, JR.  
 EDWARD F. KINNEYAN, JR.<sup>9</sup>  
 ANDREW M. CALDERON<sup>10</sup>

TECHNICAL ADVISORS:  
 TU ANH PHAM, Ph.D.  
 CATRIN VENNER, Ph.D.  
 DONALD S. CALTBITO, Ph.D.  
 ALEXIA IRIS<sup>11</sup>  
 THOMAS WEBER, Ph.D.  
 ATY SOPHIA KOKAN<sup>12</sup>

<sup>1</sup>ADMITTED TO BAR  
 OTHER THAN VA  
<sup>2</sup>EUROPEAN PATENT ATTORNEY  
<sup>3</sup>KOREAN PATENT ATTORNEY  
<sup>4</sup>REGISTERED PATENT AGENT

June 29, 2005

NEIL F. GREENBLUM  
 BRUCE B. BERNSTEIN  
 JAMES L. ROWLAND  
 ARNOLD TUTT  
 MICHAEL J. FINE  
 STEVEN WEGMAN<sup>1</sup>  
 LESLIE J. PAPIERNEK<sup>2</sup>  
 WILLIAM PLEPER<sup>3</sup>  
 STEPHEN M. ROTTALICE  
 ROBERT W. MULLER<sup>4</sup>  
 JILL M. BROWNING<sup>5</sup>  
 ALAN M. LEKKEIN<sup>6</sup>  
 WILLIAM X. LEEDANE<sup>7</sup>  
 WILLIAM S. BOSHICK<sup>8</sup>  
 PAUL A. BRAKKE, Ph.D.<sup>9</sup>  
 P. BRANKO PEJIC<sup>10</sup>  
 JOHN PRETA<sup>11</sup>  
 RICHARD F. MUENSTEINER, Ph.D.<sup>12</sup>  
 HONG J. XU<sup>13</sup>  
 VAN C. KENNEDY<sup>14</sup>  
 LINDA J. BODGE<sup>15</sup>  
 JOSEFA M. POVSNER<sup>16</sup>  
 CLARK W. MARTIN<sup>17</sup>  
 OLIVER E. ASKE, JR.<sup>18</sup>  
 DANIEL B. KOON<sup>19</sup>  
 MANNING RITTER<sup>20</sup>  
 BRIAN C. CAPPY<sup>21</sup>  
 PAUL T. LEE<sup>22</sup>  
 JOHN V. MAZZOLA<sup>23</sup>

Mr. James Wickett  
 Executive Vice President of Corporate Development  
 Macrovision Corporation  
 2830 De La Cruz Boulevard  
 Santa Clara, CA 95050

BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al  
 (our reference no. J333802)

Dear Mr. Wickett,

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter..

Very truly yours,  
 GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

CKL/as

J333802.L78

LAW OFFICES  
GREENBLUM & BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)

[www.gpatent.com](http://www.gpatent.com)

NEIL F. GREENBLUM  
BRUCE B. BERNSTEIN  
JAMES L. HOWLAND  
ARNOLD TURK  
MICHAEL J. FIVE  
STEVEN WOGAN<sup>\*</sup>  
LESLIE J. PAPERNO<sup>\*</sup>  
WILLIAM PFEIFER<sup>\*</sup>  
STEPHEN M. RODLANCE  
ROBERT W. MUELLER<sup>\*</sup>  
JILL M. BROWNING  
ALLEN M. LEPPIN<sup>\*</sup>  
WILLIAM B. LYDANE<sup>\*</sup>  
WILLIAM S. BOSNICK<sup>\*</sup>  
PAUL A. PAPER, P.D.  
P. JEREMY PAPIC<sup>\*</sup>  
JOHN PREST<sup>\*</sup>  
HEIDI RAY MUENSTREBEL, P.D.<sup>\*</sup>  
HONG J. XU<sup>\*</sup>  
VAN C. BERNSTEIN  
LINDA J. HODGE  
JOSHUA M. POVENEN<sup>\*</sup>  
CLARE W. MARTIN<sup>\*</sup>  
OLIVER E. LISH, JR.  
DANIEL S. MOOR  
BANNO MITTAS<sup>\*</sup>  
BRUCE C. COLEY<sup>\*</sup>  
PAUL T. LEE<sup>\*</sup>  
JOHN V. MAZZOLIA<sup>\*</sup>

CAITLIN LEONARD<sup>\*</sup>  
SARAH S. TUOMEY<sup>\*</sup>  
KATHY E. TAKEDOMI<sup>\*</sup>  
WESLEY NICOLAS<sup>\*</sup>  
BENJAMIN P. BOA<sup>\*</sup>  
RYAN RAPPERTY<sup>\*</sup>  
JAMES KENNETH MOORE, JR.<sup>\*</sup>  
CHARLES D. MIRELSKI, P.D.<sup>\*</sup>  
JAMES M. McALEERAN<sup>\*</sup>

OF COUNSEL:  
BRUCE H. STOWE, JR.  
EDWARD F. KENYON, JR.  
ANDREW K. CALIFERON

TECHNICAL ADVISORY:  
TU ANH PHAN, P.D.  
LAUREN VENTER, P.D.  
DONALD SCALTRITO, P.D.  
AKIRA ISHII  
THOMAS WIEDER, P.D.  
ATT SOPHIA BUKARI

<sup>\*</sup>ADMITTED TO A BAR  
OTHER THAN VA  
<sup>\*</sup>EUROPEAN PATENT ATTORNEY  
<sup>\*</sup>UKRAINIAN PATENT ATTORNEY  
<sup>\*</sup>REGISTERED PATENT AGENT

June 29, 2005

Mr. Jan Wareby  
Corporate Executive Vice President  
Sony Ericsson Mobile Communications (USA) Inc.  
7001 Development Drive  
Research Triangle Park, NC 27709

BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al  
(our reference no. J333802)

Dear Mr. Wareby:

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter..

Very truly yours,  
GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

CKL/as

J333802.L78

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

CAITLIN LHMOMMEDIU  
SARAH S. TOOMEY\*  
KATHY A. TAKAGUCHI\*  
WESLEY NICOLAS\*  
BENJAMIN F. YU  
RYAN RAVENBERG  
JAMES KENNETH MOORE, J.D.  
CHARLES D. MICHALEK, P.D.  
JAMES M. MCALPIN\*

OF COUNSEL  
BRUCE H. STOWE, JR.  
EDWARD F. KENNEDY, JR.  
ANDREW M. CALDORN

TECHNICAL ADVISORS  
TU ANH PHAN, P.D.  
KATHIN VIENTHONG  
DONALD SCALDITTO, P.D.  
AKIRA IRIE  
THOMAS WEBER, P.D.  
CATHERINE KOKAI\*

\*ADMITTED TO A BAR  
OTHER THAN VA  
\*EUROPEAN PATENT ATTORNEY  
\*KOREAN PATENT ATTORNEY  
\*REGISTERED PATENT AGENT

June 29, 2005

KEIL F. GREENBLUM  
BRUCE H. BERNSTEIN  
JAMES L. BOWLAND  
ARNOLD TOWN  
MICHAEL J. FINK  
STEVEN WEGNER\*  
LESLIE J. PAPERNAK\*  
WILLIAM PEPPER  
STEPHEN M. ROVILANCE  
ROBERT W. MURLAKE  
JILL M. BROWNING  
ALAN M. LENKIN  
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WILLIAM E. BORHICK\*  
PAUL A. BRAUNE, P.D.  
P. BRANKO PEJIC\*  
JOHN PEKLA\*  
HERIBERT F. MUENSTERER, P.D.\*  
HONG J. XU  
VAN C. LEMKE  
LINDA J. HODOK  
JOSHUA M. POVSNER\*  
CLARA W. MARTIN\*  
OLIVER B. ASKE, J.R.  
DAVID E. MOON  
HANNI KITTNER  
BRIAN C. CAKEY\*  
PAUL T. LEE\*  
JOHN V. MAZZOLA\*

Mr. Bernt Klein  
Senior Vice President and General Manager  
Siemens Information and Communication Mobile LLC  
5000 T-Rex Avenue  
Suite 300  
Boca Raton, FL 33431

BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al  
(our reference no. J333802)

Dear Mr. Klein:

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter.

Very truly yours,  
GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

CKL/as

J333802.L78

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

CAITLIN LHMOMMEDIU  
 SARAH S. TOOHEY  
 KATHY L. TAKIGUCHI  
 WESLEY NICOLAS  
 BENJAMIN P. KOTA  
 RYAN EASTFORD  
 JAMES KENNETH MOORE, JR.  
 CHARLES D. KENTLSEY, P.D.  
 JAMES M. MCALLEN

OP COUNSEL:  
 BRUCE H. STOPEK, JR.  
 EDWARD F. KENYAK, JR.  
 ANDREW M. CALDERON

TECHNICAL ADVISORS:  
 IVAN ALEX PHAM, P.D.  
 KATHY VENTZ, P.D.  
 DONALD SCALTRITO, P.D.  
 ALEXIA IRIZ  
 THOMAS WERNER, P.D.  
 AZY SOPHIA KUCAKI

<sup>1</sup> ADMITTED TO A BAR  
<sup>2</sup> ATTORNEY INVA  
<sup>3</sup> EUROPEAN PATENT ATTORNEY  
<sup>4</sup> ISRAELI PATENT ATTORNEY  
<sup>5</sup> REGISTERED PATENT AGENT

June 29, 2005

NEIL F. GREENBLUM  
 BRUCE H. BERNSTEIN  
 JAMES L. HOWLAND  
 ARNOLD YORK  
 MICHAEL J. FINE  
 STEVEN WIGMAN<sup>1</sup>  
 LESLIE J. PAPERNER<sup>2</sup>  
 WILLIAM FISHER<sup>3</sup>  
 STEPHEN M. BOYLANC<sup>4</sup>  
 ROBERT W. MUELLER  
 JILL M. BROWNING  
 ASAN M. LENKIN<sup>5</sup>  
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 PAUL L. BRAKKE, P.D.  
 P. KRANOG, P.D.<sup>1</sup>  
 JOHN FREIT<sup>1</sup>  
 MICHAEL F. MUNNSTEINER, P.D.<sup>2</sup>  
 HONG J. XU<sup>1</sup>  
 VAN C. KERST<sup>1</sup>  
 LINTIA J. WOODS<sup>1</sup>  
 JOSHUA M. PIVSNER<sup>1</sup>  
 CLARK W. MARTIN<sup>1</sup>  
 GLENNE R. ASKE, J.E.  
 DAVID L. MOOT<sup>1</sup>  
 RAMMO KITIDAR<sup>1</sup>  
 BRIAN C. CANDY<sup>1</sup>  
 PAUL T. LEE<sup>1</sup>  
 JOHN V. MAZZOLA<sup>1</sup>

Mr. George Nolen  
 President and CEO  
 Siemens Communications Inc.  
 900 Broken Sound Parkway  
 Boca Raton FL 33487

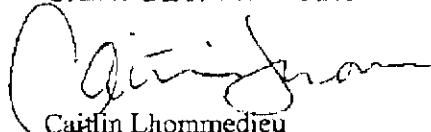
BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al  
 (our reference no. J333802)

Dear Mr. Nolen,

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter..

Very truly yours,  
 GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

CKL/as

J333802.L78

## LAW OFFICES

## GREENBLUM &amp; BERNSTEIN, P.L.C.

PATENT, COPYRIGHT AND TRADEMARK MATTERS

1950 ROLAND CLARKE PLACE

RESTON, VA 20191-1411

TEL: (703) 716-1191

FAX: (703) 716-1180

EMAIL: [gpatent@gpatent.com](mailto:gpatent@gpatent.com)[www.gpatent.com](http://www.gpatent.com)

NEIL F. GREENBLUM  
 BRUCE M. BERNSTEIN  
 JAMES L. HOWLAND  
 ARNOLD TUREK  
 MICHAEL J. FINK  
 STEPHAN WHITMAN  
 LESLIE J. PAPERKNER  
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 ROBERT W. MUELLER  
 JILL M. BROWNING  
 ALAN M. LUNKENB  
 WILLIAM E. LYDIAKIN  
 WILLIAM S. BOGDANICK  
 PAUL A. BRAKNER, Ph.D.  
 P. BRAKNER PRINC  
 JOHN FREITZ  
 HANSIBERK F. MUEHLSTEINER, Ph.D.  
 HONG J. XU  
 YAN C. KEREST  
 LINDA J. HODGES  
 JOSHUA M. MOYNSKE  
 CLARK W. MARTIN  
 OLIVER B. ASKE, JR.  
 DANIEL S. MODIN  
 HAKMO HITTNER  
 DIXIAN C. CARRUT  
 PAUL T. LEE  
 JUDY V. MAZZOLA

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 SARAH S. TOOHEY  
 KATHY E. TAKBOUCHI  
 WESLEY NICOLAS  
 BENJAMIN P. KUTA  
 RYAN RAFFERTY  
 JAMES KENNETH MOORE, JR.  
 CHARLES D. MUEHLEISEL, Ph.D.  
 JAMES M. McALEENAN

IN COUNSEL  
 BRUCE B. STONE, JR.  
 HOWARD F. KERFHAM, JR.  
 ANDREW M. CALDERON

TECHNICAL ADVISORS  
 TO ANH PHAN, Ph.D.  
 LAUREN VENTRE, Ph.D.  
 DONALD SCALIBRITO, Ph.D.  
 ANITA YIN  
 THOMAS WEBER, Ph.D.  
 ATY SOPHIA KORABI

\*ADMITTED TO A BAR  
 OTHER THAN VA  
 \*EUROPEAN PATENT ATTORNEY  
 \*KOREAN PATENT ATTORNEY  
 \*REGISTERED PATENT AGENT

June 29, 2005

Mr. Randall Boe  
 Executive Vice President and General Counsel  
 America Online, Inc.  
 22000 AOL Way  
 Dulles, VA 20166  
 (703) 265-1000

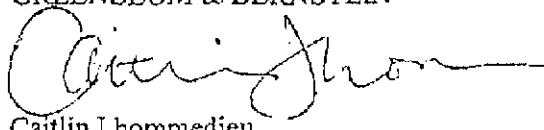
BY CERTIFIED MAIL

Re: BIS Advanced Software Systems, Ltd. v. Red Bend Software, Inc., et al (our reference no. J333802)

Dear Mr. Boe,

Enclosed please find a revised copy of our client's Motion to Amend the Complaint in the above-referenced case and a copy of the proposed Amended Complaint. We intend to file this motion ten business days after the date of this letter.

Very truly yours,  
 GREENBLUM & BERNSTEIN



Caitlin Lhommedieu

CKL/as

J333802.1.78

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIS Advanced Software Systems, Ltd., )  
Plaintiff, )  
v. ) Civil Action No. 04-11960-RWZ  
Red Bend Software, Inc., )  
Red Bend Software, Ltd., )  
Time Warner Inc., )  
ICQ, Inc., )  
InstallShield Software Corp., )  
and )  
ScanSoft, Inc., )  
Defendants. )

**MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Plaintiff BIS Advanced Software Systems, Ltd. (hereinafter "Plaintiff") requests leave of this Court to file an Amended Complaint to add five defendants: Siemens Communications, Inc., Siemens Information and Communication Mobile LLC, Sony Ericsson Mobile Communications (USA) LLC, America Online, Inc., and Macrovision Corporation (collectively, the "Proposed New Defendants")<sup>1</sup> and to drop one Defendant, Time Warner, Inc., without prejudice (which will be accomplished with a stipulation of dismissal pursuant to Rule 41).

1 Additionally, Plaintiff is considering whether to seek leave to amend the Complaint to add two other proposed new defendants, namely, RealNetworks, Inc. and Symbian, Inc. Plaintiff does not seek this amendment at this time because it is corresponding with these corporations in an effort to resolve this dispute without the Court's intervention. Plaintiff, though, brings this fact to the Court's attention in anticipation of the possibility that Plaintiff might later seek a second amendment of the Complaint.

Leave to amend a pleading shall be "freely given when justice so requires." Fed. R. Civ. P. 15(a). Regarding Rule 15(a), the Supreme Court has stated: "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Supreme Court further explained:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. — the leave sought should, as the rules require, be "freely given."

*Id.*; accord *United States v. Hougham*, 364 U.S. 310, 316 (1960); *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 158 (1964).

The First Circuit has likewise stated that leave to amend should be "freely given," and that it may be an abuse of discretion to deny an amendment which states a valid cause of action. *Gaffney v. Silk*, 488 F.2d 1248, 1251 (1st Cir. 1973).

In this case, there is no substantial reason, such as undue prejudice to the non-moving party or futility, that would preclude amendment of the complaint. Plaintiff's Motion for Leave to File an Amended Complaint should be granted because: (1) neither the existing Defendants nor the Proposed New Defendants would be unduly prejudiced; (2) the proposed amendment states a viable cause of action; (3) there would be no undue delay in the proceedings; and (4) Plaintiff has not acted in bad faith.

Upon information and belief, the Proposed New Defendants license from the Defendants Red Bend, and use the accused software products in services or products which each then offers to its respective customers and prospects, and thus infringe the patent-in-suit. See Exhibit A (printout of Defendants' Red Bend Ltd. and Red Bend Software, Inc.'s customers/partners web page, at <http://www.redbend.com/partners/> (May 19, 2005)).

The parties are now conducting written discovery and have not yet begun depositions. Therefore, Plaintiff now seeks to add the Proposed New Defendants to the present suit. Plaintiff's motion to amend the complaint should be granted because such amendment would not result in prejudice to the existing nor the Proposed New Defendants, or undue delay.

The proposed Amended Complaint is submitted herewith.

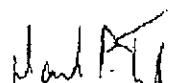
Counsel for the defendants have indicated that they do not oppose the dismissal without prejudice of Time Warner Inc. but they otherwise oppose this motion.

WHEREFORE, Plaintiff respectfully requests that this Court grant its Motion for Leave to File an Amended Complaint.

June 29, 2005

BIS Advanced Software Systems, Ltd.,

By its Attorneys

  
GRIESINGER, TIGHE, & MAFFEI, LLP  
Daniel P. Tighe (BBO #556583)  
176 Federal Street  
Boston, Massachusetts 02110-2214  
(703) 617-542-9900

GREENBLUM & BERNSTEIN, P.L.C.  
Neil F. Greenblum  
Michael J. Fink  
Caitlin Lhommedieu  
1950 Roland Clarke Place  
Reston, Virginia 20191  
(703) 716-1191

Admitted pro hac vice

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIS Advanced Software Systems, Ltd.,        )  
    )  
    )  
Plaintiff,                                    )  
    )  
    )  
v.   ) Civil Action No. 04-11960-RWZ  
    )  
    )  
Red Bend Software, Inc.,                    )  
Red Bend Software, Ltd.,                    )  
ICQ, Inc.,                                    )  
InstallShield Software Corp.,             )  
ScanSoft, Inc.,                             )       **JURY TRIAL DEMANDED**  
Siemens Communications Inc.,             )  
Siemens Information and Communication   )  
Mobile LLC,                                 )  
Sony Ericsson Mobile Communications     )  
(USA) LLC, and                             )  
America Online, Inc.,                     )  
Macrovision Corporation,                   )  
    )  
Defendants.                                 )  
\_\_\_\_\_  
)

**FIRST AMENDED COMPLAINT**

Plaintiff BIS Advanced Software Systems, Ltd. by and through its attorneys, hereby demands a jury trial and alleges, upon information and belief, for its Complaint against Defendants Red Bend Software, Inc., Red Bend Software, Ltd., ICQ, Inc., InstallShield Software Corp., ScanSoft, Inc., Siemens Communications Inc., Siemens Information and Communication Mobile LLC, Sony Ericsson Mobile Communications (USA) Inc., America Online, Inc. and Macrovision Corporation as follows:

THE PARTIES

1. Plaintiff BIS Advanced Software Systems, Ltd. (hereinafter, "Plaintiff") is an Israeli company, with its principal place of business at 35 Montefiore Street, Tel Aviv, 65201 Israel.

2. Plaintiff is the assignee of U.S. Patent No. 6,401,239 (hereinafter, "the '239 Patent"), a true and correct copy of which is attached with the Certificate of Correction as Exhibit A.

3. Defendant Red Bend Software, Inc. is organized and existing under the laws of the Commonwealth of California, with its principal place of business at 175 Crossing Blvd., Suite 320, Framingham, Massachusetts 01702.

4. Defendant Red Bend Software, Ltd. is an Israeli company, with its principal place of business at 11 Ayal Street, Afek Industrial Park, Rosh Ha'ayin, 48092 Israel.

5. Defendant ICQ, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166. Upon information and belief, ICQ, Inc. is a wholly owned subsidiary of Time Warner, Inc.

6. Defendant InstallShield Software Technologies, Inc. is organized and existing under the laws of the Commonwealth of Illinois, with its principal place of business at 900 National Parkway, Suite 125, Schaumburg, Illinois 60173.

7. Defendant ScanSoft, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 9 Centennial Drive, Peabody, Massachusetts 01960.

8. Defendant Siemens Communications Inc., is organized and existing under the laws of the State of Delaware, with its principal place of business at 900 Broken Sound Parkway Boca Raton, FL 33487.

9. Defendant Siemens Information and Communication Mobile LLC., is organized and existing under the laws of the State of Delaware, with its principal place of business at 5000 T-Rex Avenue, Suite 300 Boca Raton, FL 33431.

10. Defendant Sony Ericsson Mobile Communications (USA) Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 7001 Development Drive P.O. Box 13969 Research Triangle Park, NC 27709.

11. Defendant America Online, Inc. is organized and existing under the laws of the State of Delaware, with its principal place of business at 22000 AOL Way, Dulles, VA 20166.

12. Defendant Macrovision Corporation is organized and existing under the laws of the State of Delaware, with its principal place of business at 2830 De La Cruz Boulevard Santa Clara, CA 95050.

#### JURISDICTION AND VENUE

13. Subject matter jurisdiction of this Court is proper under 28 U.S.C. §§ 1331 and 1338.

14. This Court can properly exercise personal jurisdiction over Defendant Red Bend Software, Inc. by virtue of the fact that it is headquartered in the Commonwealth of Massachusetts, thereby availing itself of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

15. This Court can properly exercise personal jurisdiction over Defendant Red Bend Software, Ltd. by virtue of the facts that it is related to Red Bend Software, Inc. and that it placed infringing software in the stream of commerce, through its U.S. Massachusetts facility, thereby availing itself of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

16. This Court can properly exercise personal jurisdiction over Defendants America Online, Inc. and ICQ, Inc. by virtue of the fact that, upon information and belief, they have used infringing computer software to download updates to their customers in the District of Massachusetts, including, but not limited to, software under the brand names "vCurrent" and/or "vBuild for InstallShield" thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

17. This Court can properly exercise personal jurisdiction over Defendant InstallShield Software Corp. by virtue of the fact that, upon information and belief, it has offered for sale and/or sold infringing computer software in the Commonwealth of Massachusetts, including, but not limited to, software under the brand names "vCurrent," "vBuild for InstallShield," and/or "InstallShield Update Service," thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

18. This Court can properly exercise personal jurisdiction over Defendant ScanSoft, Inc. by virtue of the fact that they are headquartered in the Commonwealth of Massachusetts, thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof, and by virtue of the fact that, upon information and belief, they

have used infringing computer software in the Commonwealth of Massachusetts, including, but not limited to, software under the brand name "InstallShield Update Service."

19. This Court can properly exercise personal jurisdiction over Defendant Siemens Communication, Inc., by virtue of the fact that they are registered to do business in the Commonwealth of Massachusetts, and upon information and belief, they contract to supply mobile telephones in this commonwealth, thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

20. This Court can properly exercise personal jurisdiction over Defendant Siemens Information and Communication Mobile LLC., by virtue of the fact that they are registered to do business in the Commonwealth of Massachusetts, and upon information and belief, they contract to supply mobile telephones in this commonwealth, thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

21. This Court can properly exercise personal jurisdiction over Defendant Sony Ericsson Mobile Communications (USA) Inc., by virtue of the fact that, upon information and belief, they contract to supply mobile telephones in this commonwealth, thereby availing themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

22. This Court can properly exercise personal jurisdiction over Defendant Macrovision Corporation by virtue of the fact that, upon information and belief, they have offered for sale, sold and/or made available the infringing computer software in the Commonwealth of Massachusetts, including, but not limited to, software under the brand names "vCurrent," "vBuild for InstallShield," and/or "InstallShield Update Service," thereby availing

themselves of the laws of the Commonwealth of Massachusetts and deriving the protections and benefits thereof.

23. Venue for the present action properly lies in this District pursuant to 28 U.S.C. §§ 1339(a) and (b).

THE PATENT-IN-SUIT

24. The '239 Patent, entitled "System and method for quick downloading of electronic files," was duly and legally issued on June 4, 2002.

25. The '239 Patent is properly assigned to Plaintiff.

BACKGROUND

26. On or about March 22, 1999, Plaintiff filed a patent application which ultimately matured into the '239 Patent.

27. The '239 Patent refers generally a system and method for improved transfer of electronic files.

28. In letters dated January 30, 2002, Plaintiff notified Defendants Red Bend, Ltd. and InstallShield Software Corp. that certain computer software that they each manufactured, used, or sold infringed the '239 Patent.

29. On more than one occasion since January 30, 2002, Plaintiff has notified Defendants Red Bend, Ltd. and InstallShield Software Corp. of the continuing infringement by the computer software that they manufactured, used, or sold.

**COUNT 1 — PATENT INFRINGEMENT**

30. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 29 above, as if fully set forth herein.

31. Defendants Red Bend Software, Inc., Red Bend Software, Ltd., ICQ, Inc., InstallShield Software Corp., ScanSoft, Inc., Siemens Communication Inc., Siemens Information and Communication Mobile LLC, Sony Ericsson Mobile Communications (USA) Inc., America Online, Inc. and Macrovision Corporation (hereinafter, collectively, the "Defendants") have made, used, offered to sell, and/or sold in the United States, and/or imported into the United States computer software incorporating the technology claimed in the '239 Patent without Plaintiff's authorization.

32. Defendants continue to manufacture, use, offer for sale, and/or sell within the United States and/or import into the United States computer software incorporating the technology claimed in the '239 Patent without Plaintiff's authorization.

33. Defendants have and continue to induce and/or engage in contributory infringement by marketing, selling, distributing and servicing computer software within the United States incorporating the technology claimed by the '239 Patent without Plaintiff's authorization.

34. The aforementioned acts by Defendants, including making, using, selling, offering for sale, importing, distributing, maintaining and/or servicing computer software, infringe and/or have infringed the '239 Patent pursuant to at least Title 35 U.S.C. § 271(a), (b) and/or (c).

35. Defendants do not have a license to make, use, sell, offer for sale or import computer software which incorporates the technology covered by the '239 Patent.

36. Defendants' infringement of the '239 Patent has been, and continues to be, willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a judgment against Defendants as follows:

- a. Declaring that Defendants have infringed the '239 Patent;
- b. Declaring that Defendants have induced infringement and engaged in contributory infringement of the '239 Patent;
- c. Awarding Plaintiff damages for Defendants' infringement of the '239 Patent;
- d. Declaring that Defendants' infringement of the '239 Patent is and has been willful;
- e. Awarding Plaintiff treble damages and attorneys' fees for Defendants' willful infringement of the '239 Patent;
- f. Enjoining Defendants from infringing the '239 Patent in the future;

- g. Declaring that the case is exceptional pursuant to 35 U.S.C. § 285; and
- h. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

July \_\_\_\_\_, 2005

BIS Advanced Software Systems, Ltd.,

By its Attorneys

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GRIESINGER, TIGHE, & MAFFEI, LLP  
Daniel P. Tighe (BBO #556583)  
176 Federal Street  
Boston, Massachusetts 02110-2214  
(703) 617-542-9900

GREENBLUM & BERNSTEIN, P.L.C.  
Neil F. Greenblum  
Michael J. Fink  
Caitlin Lhenimedieu  
1950 Roland Clarke Place  
Reston, Virginia 20191  
(703) 716-1191

Admitted pro hac vice